

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DOUGLAS LACY, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

COMCAST CABLE COMMUNICATIONS,
LLC,

Defendant.

NO. 3:19-cv-05007-RSM

**STIPULATION AND PROTECTIVE
ORDER**

I. STIPULATION

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on

any ground to use in evidence of any of the material covered by this Protective Order.

2. DEFINITIONS OF CONFIDENTIAL MATERIAL

Confidential Material, as used in this Order, consists of the following materials and categories of materials:

A. “CONFIDENTIAL” material shall include the following documents and tangible things produced or otherwise exchanged: trade secrets, research, design, development, financial, technical, marketing, planning, personal, or commercial information, as such terms are used in the Fed. R. Civ. P. 26(c)(1)(G) and any applicable case law interpreting Fed. R. Civ. P. 26(c)(1)(G).

B. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material shall include the following documents and tangible things produced or otherwise exchanged: (1) corporate trade secrets; (2) nonpublic research and development data, including, but not limited to, cost data, pricing formulas, inventory management programs, and other sales or business information not known to the public; (3) information obtained from a non-party pursuant to a non-disclosure agreement; and (4) customer-related data that a party believes in good faith to be subject to federal, state or foreign data protection laws or other privacy obligations.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover (1) information that is in the public domain or becomes part of the public domain through trial or otherwise and (2) any information known to the receiving party prior to the disclosure or obtained by the receiving party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the designating party. Finally, any use of confidential material at trial shall be governed by a separate agreement or order.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement. It is expressly
8 intended and agreed that Confidential material will not be made public via social media, Internet
9 publication or otherwise.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the designating party, a receiving party may
12 disclose any confidential material only to:

- 13 (a) the parties;
- 14 (b) the receiving party’s counsel of record in this action, as well as employees
15 of counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 16 (c) the officers, directors, and employees (including in house counsel) of the
17 receiving party to whom disclosure is reasonably necessary for this litigation;
- 18 (d) experts and consultants to whom disclosure is reasonably necessary for
19 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A);
- 21 (e) the court, court personnel, and court reporters and their staff, including
22 any court reporter or videographer reporting a deposition;
- 23 (f) copy or imaging services retained by counsel to assist in the duplication of
24 confidential material, provided that counsel for the party retaining the copy or imaging service
25 instructs the service not to disclose any confidential material to third parties and to immediately
26 return all originals and copies of any confidential material;
- 27 (g) during their depositions, witnesses in the action to whom disclosure is

1 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 2 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 3 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
 4 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 5 under this agreement;

6 (h) mediators or settlement officers, and their supporting personnel, hired or
 7 appointed to address any issue(s) in the litigation;

8 (i) the author or recipient of a document containing the information or a
 9 custodian or other person who otherwise possessed or knew the information;

10 (j) professional jury or trial consultants, mock jurors, and professional
 11 vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 12 “Acknowledgement and Agreement to Be Bound” (Exhibit A); and

13 (k) other persons by written agreement of the parties.

14 4.3 Disclosure of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
 15 Information or Items. Material and information designated as “HIGHLY CONFIDENTIAL—
 16 ATTORNEYS’ EYES ONLY” shall only be disclosed to:

17 (a) the Court, its staff, in-house and outside counsel of record for each party,
 18 the secretarial, clerical, and the paralegal staff of each;

19 (b) the receiving party’s counsel of record in this action, as well as employees
 20 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

21 (c) mediators or settlement officers, and their supporting personnel, hired or
 22 appointed to address any issue(s) in the litigation;

23 (d) during their depositions, witnesses in the action to whom disclosure is
 24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court;

26 (e) consulting and testifying experts retained by a party in this action who
 27 have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.4 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated
 2 for protection do not qualify for protection, the designating party must promptly notify all other
 3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 5 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 6 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 7 be clearly so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (e.g., paper or electronic documents
 9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 10 proceedings), the designating party must affix the word "CONFIDENTIAL" or "HIGHLY
 11 CONFIDENTIAL—ATTORNEYS' EYES ONLY" to each page that contains confidential
 12 material. If only a portion or portions of the material on a page qualifies for protection, the
 13 producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
 14 markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 16 and any participating non-parties must identify on the record, during the deposition or other
 17 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 18 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 19 receiving the official transcript of the deposition or other pretrial proceeding, designate portions
 20 of the transcript, or exhibits thereto, as confidential. All deposition testimony taken in this case
 21 shall be treated as CONFIDENTIAL until the expiration of the fifteen-day review period.

22 If a party or non-party desires to protect confidential information at trial, the issue should
 23 be addressed during the pre-trial conference.

24 (c) Other tangible items: the producing party must affix in a prominent place
 25 on the exterior of the container or containers in which the information or item is stored the word
 26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY." If only a
 27 portion or portions of the information or item warrant protection, the producing party, to the

1 extent practicable, shall identify the protected portion(s).

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
3 designate qualified information or items does not, standing alone, waive the designating party's
4 right to secure protection under this agreement for such material. Upon timely correction of a
5 designation, the receiving party must make reasonable efforts to ensure that the material is
6 treated in accordance with the provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.

14 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
15 regarding confidential designations without court involvement. Any motion regarding
16 confidential designations or for a protective order must include a certification, in the motion or in
17 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
18 conference with other affected parties in an effort to resolve the dispute without court action. The
19 certification must list the date, manner, and participants to the conference. A good faith effort to
20 confer requires a face-to-face meeting or a telephone conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
22 intervention, the designating party may file and serve a motion to retain confidentiality under
23 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). If the
24 designating party does not file a motion to retain confidentiality within 21 days following the
25 conclusion of the parties' conference regarding the designation, the designation shall be deemed
26 withdrawn. The burden of persuasion in any such motion shall be on the designating party.
27 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose

unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

The terms of this Order are applicable to information produced by a non-party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by non-parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a non-party from seeking additional protections.

In the event that a party is required, by a valid discovery request, to produce a non-party’s confidential information in its possession, and the party is subject to an agreement with the non-party not to produce the non-party’s confidential information, then the party shall:

(a) promptly notify in writing the requesting party and the non-party that some or all of the information requested is subject to a confidentiality agreement with a non-party;

1 (b) promptly provide the non-party with a copy of the Stipulated Protective Order in
 2 this litigation, the relevant discovery request(s), and a reasonably specific description of the
 3 information requested; and

4 (c) make the information requested available for inspection by the non-party.

5 If the non-party fails to object or seek a protective order from this court within fourteen
 6 days of receiving the notice and accompanying information, the receiving party may produce the
 7 non-party's confidential information responsive to the discovery request. If the non-party timely
 8 seeks a protective order, the receiving party shall not produce any information in its possession
 9 or control that is subject to the confidentiality agreement with the non-party before a
 10 determination by the court. Absent a court order to the contrary, the non-party shall bear the
 11 burden and expense of seeking protection in this court of its Protected Material.

12 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 14 material to any person or in any circumstance not authorized under this agreement, the receiving
 15 party must immediately (a) notify in writing the designating party of the unauthorized
 16 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
 17 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 18 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
 19 Agreement to Be Bound" that is attached hereto as Exhibit A.

20 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 21 MATERIAL

22 When a producing party gives notice to receiving parties that certain inadvertently
 23 produced material is subject to a claim of privilege or other protection, the obligations of the
 24 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 25 provision is not intended to modify whatever procedure may be established in an e-discovery
 26 order or agreement that provides for production without prior privilege review. The parties agree
 27 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must destroy or return all confidential material to the producing party, including all copies, extracts and summaries thereof.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

RESPECTFULLY SUBMITTED AND DATED this 15th day of January, 2021.

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II. ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

IT IS SO ORDERED.

DATED this 19th day of January, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address],
 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Western District of
 Washington on [date] in the case of *Douglas Lacy v. Comcast Corporation*, Case No.
 3:19-cv-05007-RSM. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
 in any manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____